IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 280 OF 2004()

AGAINST THE ORDER DATED 24/09/2003 IN EP 280/96 IN LAR.4/1993 OF I ADDL.SUB COURT,ERNAKULAM

.....

REVN. PETITIONER: DECREE HOLDER

KURIAKOSE, SON OF LATE VARKEY,
MANAYATH MANICKANAMPARAMBIL HOUSE,
NADAKKAVU, UDAYAMPEROOR.

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENTS: JUDGMENT DEBTORS

---

1. STATE OF KERALA, REPR4ESENTED BY
DISTRICT COLLECTOR, ERNAKULAM.

2. M/S INDIAN OIL CORPORATION, REPRESENTED
BY AREA MANAGER, INDIAN OIL CORPORATION LTD.,
PANAMPILLY NAGAR, COCHIN-682020

BY ADV. SRI.A.M.SHAFFIQUE
SRI.A.M.SHAFFIQUE
SMT.PRIYA KRISHNAMOORTHY
GOVERNMENT PLEADER SRI. THOMAS JOHN AMBOOKEN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, ALONG WITH CRP NO. 305 OF 2004 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING::

P.R. RAMAN, J.

= = = = = = = =

C.R.P. NO. 280 & 305 OF 2004

= = = = = = = = = = = = = = = = = = =

DATED THIS, THE 20TH DAY OF JULY, 2007.

O R D E R

Both these revisions arise out of the same order passed by the First Additional Sub Court, Ernakulam, in E.P. 280/1996 in L.A.R. 4/1993. C.R.P. 280/1996 is filed by the claimant whereas C.RP. 305/2004 is filed M/s. Indian Oil Corporation Ltd., who is the requisitioning authority for whom the land is acquired.

2. In this case, a decree was passed on 23.2.1995 by the Sub Court, in the Land Acquisition Reference cases granting enhancement together with solatium, additional market value and interest. An appeal as L.A.A. 991 was preferred before this Court which was also disposed of on 25.11.1998, modifying the decree passed by the court below and reducing the enhanced value. Both sides filed their calculation statement. Earlier, as per order dated 30.3.2001 the executing court accepted the statement of the judgment debtor and execution petition was dismissed. There was a contention that interest would be permissible only on the balance amount after deducting the award amount. Subsequently, the E.P. was restored as per the order

dated 11.10.2002 in E.A. 1130/2002. A Lower Division Clerk attached to the office of the executing court was deputed to verify the statement and file a report, which was subsequently filed. But this report was not accepted by the court below. Meanwhile, the decree holder was allowed to claim additional interest on the solatium and additional market value, following the decision in **Santha v. State of Kerala** (2002(2) KLT 628). The second judgment debtor has also filed an application as E.A. 1309/2003 to re-open the matter for hearing and the same was allowed. After hearing both sides, the court below found in para 5 of the order impugned in this case that the total enhancement awarded is Rs. 7, 72,350/- and is exclusive of 30% solatium and 12% additional market value. It also noticed the fact that as per the appellate decree the amount already paid is liable to be deducted. So, inclusive of the solatium and additional market value and after deducting the amount already deposited, the balance was worked out to Rs. 8,19,132.50. The decree holder calculated interest on the whole amount; but the court below held that he is entitled to interest at 9% per annum for one year and 15% per annum thereafter on the said amount coming to Rs. 18,25,280/-. It was further held that income tax on the said amount is deductable. After noting the deposits made during the pendency of the E.P. the balance was worked out to Rs. 4,45,431/-. Since the decree holder claimed an amount of Rs. 14,81,561/- as per E.A.

1297/2003, the same was rejected without prejudice to file a fresh application for the amount which was already fixed as Rs. 6,46,208/-. Merely because the decree holder has claimed more amounts than what is actually due to him, there is no reason to reject the Execution Petition on that ground; rather the court has to calculate the amount actually due and payable and fix the same and proceed to execute the same. The order passed by the court below also do not show as to how the interest was calculated and from which date. Only the final figures are shown in the order. The working sheet on which calculations are made are not appended or made available.

3. In this connection, both sides rely on a few decisions of the apex court. The last of such decision rendered by the apex court is the one reported in **Gurpreet Singh v. Union of India** (2006(8) SCC 457). The apex court held in paragraph 32 as follows:

> In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage.

On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

The second stage occurs on a reference under Section 18 of the act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference. The claimant/decree holder can seek an appropriation of the amounts deposited pursuant to that award-decree, only towards the enhanced amount so awarded by the Reference Court. <u>While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Section 23(1-A) of the Act</u> and if, there is a shortfall, claim that part of the compensation with interest thereon as provided in Section 28 of the Act and as covered by the award-decree. Once the sum enhanced by the Reference Court, along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the Reference Court and seek to have a reappropriation of the amount towards what is due.

The third stage occurs, when in appeal, the High Court enhances the compensation. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is

> applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the Reference Court if it had not already been deposited.
>
> The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply."

4. The apex court further held that the mandates of Sections 34 and 28 is that interest would run from the date on which the Collector takes possession till the particular amount is deposited as provided in the said sections and it ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation. This clearly indicates that a claimant or decree-holder who has received the entire amount awarded by the Reference Court or who had notice of the deposit of the entire amount so awarded cannot claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has directed to pay additional compensation. (Emphasis given) Such a blanket transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act.

5. The apex court has also made reference to its earlier decision in

Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd. ((1996) 2 SCC 71) which also indicates that when an award/decree is passed specifying the amounts under different heads like the amount under Section 23(1), 23(2), 23(1-A) and the interest under Section 28 and the judgment debtor makes a deposit of the specified sums under these different heads, it will amount to the judgment debtor intimating the decree holder as to how the sum deposited is to be appropriated in discharge of the obligation of the judgment debtor. Once a decree holder receives the payment of the sums thus deposited, he would be accepting the appropriation made by the judgment debtor under the award decree in the scheme of the Land Acquisition Act and would not be entitled to seek an appropriation as if the judgment debtor has not made any intimation and that he is entitled to appropriate at his volition.

6. Yet another question considered was whether interest can be given at the execution stage and it was held that interest and solatium can be given only if the reference court or the appellate court has not negatived the same expressly or by implication and such interest on solatium can be claimed only in pending executions and such interest wold be recoverable only from 19.9.2001 and not for any period prior thereto and this will not entail any re-appropriation or fresh appropriation by the decree holder.

7. Obviously, the order passed by the court below does not appear to

have taken note of the principles as held by the apex court in the manner of calculating the amount evidently because the position was made abundantly clear only latter by the aforesaid decision reported in **Gurpreet Singh 's** case (supra). In the above circumstances, the order passed by the court below is set aside and the matter is remanded to the court below for fresh consideration. Both sides shall be given opportunity to file their statements showing the various amounts due and payable, the deposit, if any, made and received and also the interest payable at different stages. After hearing both sides and applying the principles as held by the apex court, the court below shall dispose of the matter in accordance with law.

The parties shall appear before the court below on 13.8.2007.

P.R. RAMAN,
(JUDGE)

knc/-